

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
MARTINSBURG

**MATTHEW DWAYNE SMITH,**

Petitioner,

v.

**CIVIL ACTION NO. 3:08-CV-124  
CRIMINAL ACTION NO. 3:05-CR-7-1  
(BAILEY)**

**UNITED STATES OF AMERICA,**

Respondent.

**ORDER ADOPTING CORRECTED REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Corrected Report and Recommendation of United States Magistrate Judge James E. Seibert. By Standing Order, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Seibert filed his Corrected R & R on February 26, 2009 [Civ. Doc. 6 / Crim. Doc. 454]. In that filing, the magistrate judge recommended that this Court deny the § 2255 petition.

Pursuant to 28 U.S.C. § 636 (b) (1) (c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v.*

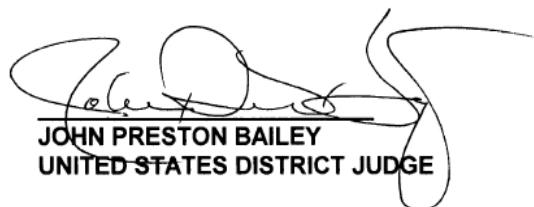
*Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Seibert's R & R were due within ten (10) days of its receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The docket reflects that service was accepted on March 2, 2009. See Crim. Doc. 455. To date, neither party has filed objection. Accordingly, this Court will review the report and recommendations for clear error.

Upon careful review of the report and recommendation, it is the opinion of this Court that the **Magistrate Judge's Corrected Report and Recommendation [Civ. Doc. 6 / Crim. Doc. 454]** should be, and the same is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Therefore, this Court hereby **DENIES** the petitioner's § 2255 motion **[Civ. Doc. 1 / Crim. Doc. 405]** and **ORDERS** it **STRICKEN** from the active docket of this Court. As a final matter, the previous R&R **[Civ. Doc. 5 / Crim. Doc. 440]** is hereby **TERMINATED as moot**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** May 7, 2009.



JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE